

FY 2008 Annual Program Performance Measures

DEPARTMENT: MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC GROWTH

APPROPRIATION UNIT: Management Services **PROGRAM:** METRO Authority and FOIA

TIMELINE: October 1, 2007 through September 30, 2008

BUREAU/OFFICE DESCRIPTION

METRO Authority (Public Act 48 of 2002)

The Metropolitan Extension Telecommunications Right-of-Way Authority (METRO Authority) was created on November 1, 2002, under Public Act 48 of 2002. The METRO Act gives the Authority the responsibility to coordinate public right-of-way matters with municipalities; the exclusive power to assess maintenance fees from telecommunication providers owning telecommunication facilities in public rights-of-ways within a municipality; and to allocate and disburse collected annual maintenance fees to 1,738 eligible and 40 ineligible municipalities. The Authority may also promulgate rules to implement and administer the Act.

Freedom of Information Act (Public Act 442 of 1976, as amended)

The Freedom of Information Act (FOIA) provides Michigan residents (and others) access to public records and information regarding the department's activities.

FUND SOURCE

Public Act 48 of 2002 created a funding stream but did not allow the funds to be used for program administration.

DLEG has been using appropriation authority from Executive Director Programs (Liquor Purchase Revolving Fund) to operate the program at a bare minimum.

FOIA support is funded through payments received from the requestor.

MISSION STATEMENT

The mission of the METRO Authority/FOIA unit is to grow Michigan telecommunication providers to each municipality by:

- Establishing a common right-of-way procedure and fee paid by telecommunication providers to each municipality.
- Allowing Michigan's municipalities to reasonably control and manage their public right-of-ways.
- Recovering the costs of using rights-of-way by telecommunication providers.
- Ensuring effective review and disposition of disputes between municipalities and telecommunication providers as they relate to right-of-way matters.
- Assuring that all available funds from providers are timely collected and distributed to municipalities.
- Assuring that FOIA requests are processed accurately and timely.

MAIN COMPONENTS

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A. METRO Authority Unit

The METRO Authority assists Michigan municipalities and telecommunication providers and, ultimately, Michigan residents by coordinating telecommunication right-of-way facilities; collects from providers and distributes \$22-\$30 million annually to 1,738 eligible municipalities.

B. Freedom of Information Act Unit

The Freedom of Information Act (FOIA) helps Michigan residents (and others) have access to public records and information regarding the department's activities.

CUSTOMERS (INTERNAL/EXTERNAL)

METRO Authority/FOIA customers consists of Michigan consumers of METRO Act/FOIA services (1,778 municipalities—95+ telecommunication providers); other DLEG units (33 FOIA coordinators); trade/governmental associations (CLECA, TAM, MML, MTA, etc.); federal/other state agencies/citizens; state legislators; peers/subordinates.

As a semi-regulatory unit implementing both METRO Act and FOIA statutes mandates, the unit provides support to customers by:

- Continuously educating the municipalities, providers, and the public regarding the implementation of the METRO Act.
- Coordinating the FOIA activities of DLEG bureaus/offices in a consistent and timely manner.
- Timely decisions regarding PA48 and FOIA issues.
- Providing proper funding/staffing to enable efficient operation of PA48 and FOIA activities.
- The way we conduct business and respond to our customers.
- Regular communications with peers, customers, and DLEG policy makers via letter, email, website inclusions.
- Regular staff meetings and planning sessions.
- Website publications of “Determinations” regarding relevant policy decisions.
- Periodic meetings with customer groups, including Michigan Municipal League, Michigan Township Association, Telecommunication Association of Michigan, Telecommunication Association of Michigan, CLECA, etc.
- Annual reports; telephone discussions with customers; work groups; surveys, etc.

CRITICAL GOALS FOR FY08

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METRO Authority (MA) Program Goals

A. Annual Report (Section 3(4))

Pursuant to Section 3(4) of PA 48 of 2002, prepare and file the year 2007 annual report of activities with the Governor and members of the legislative committees dealing with energy, technology, and telecommunications by or before March 1, 2008.

Result: Report prepared and submitted to Governor and Legislature February 2008.

B. Provider Permits (Section 5(1))

Survey all participating municipalities regarding the number of permits granted, linear footage constructed, and to whom permits were granted by June 13, 2008.

Result: This goal was met.

C. Route Map Contents (Section 6(5))

In 2004, the METRO Authority requested input from the Michigan Municipal League, the Michigan Township Association, and the Telecommunications Association of Michigan regarding: (1) information to be included in the route maps of providers facilities, and (2) which state agency has the authority to require route map contents—METRO Authority or MPSC. These issues were not resolved in 2007 and will again be targeted for resolution by July 2008.

Result: METRO Authority issued Route Map Minimum Requirement Instructions June 12, 2008.

D. Collection and Disbursement of Provider Fees (Section 8)

1. Send providers request to confirm and/or correct the linear footage of right-of-way facilities regarding fees to be billed by February 15, 2008, or sooner.

Result: MA met this goal.

2. Determine fee amount owed by each provider and bill provider by or before March 14, 2008.

Result: MA met this goal.

3. Collect all due provider fees by April 25, 2008.

Result: MA collected \$21.8 million from 85 providers, an increase of \$323,578 more than previous year; billing includes 3 providers that received Broadband Authority loans.

4. Re-bill delinquent payer providers by May 16, 2008.

Result: MA met this goal--\$55,219 late payments carried over.

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5. Prescribe the schedule for the allocation and disbursement of fees to municipalities by May 16, 2008.

Result: MA met this goal.

6. Disburse maintenance fees to eligible (opted-in) municipalities by May 30, 2008.

Result: MA disbursed \$21.8 million by May 30, 2008.

7. Determine status of any delinquent payer provider and consider authorizing the department of Treasury to collect delinquent fees by or before June 13, 2008.

Result: MA met this goal; no fines requested to be assessed.

E. Provider Credits (Section 8(14, 16, 16))

Request information from the MPSC regarding the determination of provider applications for property tax credits via PA 282, MCL 207 of 1905 for METRO Authority analysis on a quarterly basis:

- October 1 thru December 31, 2007
- January 1 thru March 31, 2008
- April 1 thru June 30, 2008
- July 1 thru September 30, 2008

Result: MA met this goal.

F. Municipality Use of Funds (Section 10(4)&(5))

1. Post on METRO Authority website 2007 Annual Report Form; to simplify municipal reporting by or before April 1, 2008.
2. Issue to eligible municipalities revised/updated Annual Report Guidelines by or before April 18, 2008.
3. Collect and analyze information reported by eligible municipalities by or before June 13, 2008.

Result: MA met this goal, now only 20 of 1,778 municipalities ineligible to receive METRO Act funds.

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G. Undisputed Fee Payments (Section 18(2))

Determine whether there are undisputed fees owed the METRO Authority for referral to MPSC for action by or before June 30, 2008.

Result: MA still working to determine undisputed fees.

H. Other

- Revise/update METRO Authority website information quarterly or as needed.

Result: MA met this goal.

- Confirm correct address to send payments; correct name of chief elected official/appointed official by June 13, 2008.

Result: MA met this goal.

- If a FY08 budget is appropriated for the METRO Authority, the following will need to be addressed:

1. Determining staffing/consultant needs and costs by October 1, 2008.
2. Municipality Payment Calculations—Develop (aside from MDOT), capability to calculate municipality allocations based on the Act 51 funds distribution system by or before April 30, 2008.
3. Databases—acquire assistance (MDIT or other services) to convert large spreadsheet information to databases necessary to build reports, mail merges, etc., by or before July 18, 2008.
4. Web Page—acquire assistance to make web page more useful for municipalities and other affected parties by July 18, 2008.

Result: MA staff made a presentation to House and Senate committees/representatives regarding the need for administrative/operating funds for the MA. House Committee, in May, referred matter to “Work Group.” No further action taken. Also, MA met with Representative Frank Accavitti regarding possibility of introduction of amendment to METRO Act to provide administrative/operating funds—no further action at this time.

- If no FY08 budget approved for the METRO Authority, continue strategy to amend P.A. 48 to provide for administrative/operational funds for FY08; and/or FY09.

Result: MA will continue efforts to annual METRO Act to provide for administrative/operating funds.

I. Other Program Results

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- Waived \$19,750.00 in fees for AT&T and \$254.00 in fees for Allband Communications Cooperative.
- Disbursed about \$21.8 million to municipalities by May 31, 2008, including \$8,617 in interest and \$413,371 in prior year carry-forward.
- No. of eligible municipalities not receiving METRO Act funds held in escrow:
 - Townships*
 - Almena, \$3,912.28
 - Bay, \$2,510.30
 - Cornell, \$2,418.24
 - Ensign, \$2,778.59
 - Garfield, \$15,911.11
 - Lincoln, \$2,020.07
 - Villages*
 - Lake Odessa, \$7,208.58
- No. non-eligible municipalities not receiving METRO Act funds in 2008 was 20.
- No. new fee waivers received/granted aside from existing to Allband—none.
- Eight Determinations/Rulings issued.
- 183 municipalities annual reports received and reviewed for compliance.
- 183 municipalities were contacted regarding new METRO Authority Database and ability to file annual reports on-line.
- +25 inquiries sent to potential providers.
- Six annual/special reports prepared, including:
 - 2007 Annual METRO Act Report to Governor/Legislature (2-29-08)
 - Presentations regarding Senate Bill 108 (PA 130 of 2008) that allowed 19 additional municipalities to opt-in and receive METRO Act funding (\$75,920.49) during 2008.
 - PowerPoint presentation to legislative committee regarding METRO Authority administrative funding.
 - Database conversion project basically completed.
 - METRO Act Property Tax Credit.
 - Article for Michigan Township Association magazine.

Freedom of Information

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A. FOIA Rules/Procedures

- Publish DLEG FY08 FOIA Fees procedures/guidelines by or before October 1, 2007.
Result: FOIA Unit met this goal.
- Develop and distribute to designated FOIA liaisons DLEG rules and procedures governing DLEG responses to FOIA requests by February 15, 2008, or sooner.
Result: Issued, via DLEG Director, DLEG Freedom of Information Act Policy/Procedures/Guidelines Manual February 28, 2008.

B. FOIA Liaisons

- Update DLEG unit's designated FOIA liaisons listing by October 1, 2007 and March 1, 2008.
Result: FOIA Unit met this goal—done as staff/assignments change.
- Arrange for FOIA liaisons training via the Attorney General's office and/or Civil Service as offered.
Result: FOIA Unit met this goal—4 training opportunities made available.

CHALLENGES:
METRO Authority

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Currently, the METRO Authority yet consists of two FTEs (Director and a Secretary) and a permanent intermittent staff person who works 8-24 hours/week. Due to the numerous and complex duties and responsibilities to implement PA 48, there is critical need for additional staff; and a specific, detailed budget. For instance, aside from resources needed to engage the Attorney General's assistance, or perform provider linear footage audits, there continues to be internal information technology needs from MDIT, including:

1. Databases – Currently the METRO Authority maintains all the data for the METRO Authority on quite large spreadsheets. Assistance is needed in converting this information to databases to be able to build reports, mail merges, etc. MDIT and DLEG has been informed of this need via the METRO Authority's FY2006 Proposed MDIT Projects submission of September 30, 2005; completion of the Data Conversion Project is anticipated by June 30, 2008.
Result: Phase one of project completed June 2008.
2. Web Page – The METRO Authority continues to need assistance to make its web page more useful, e.g. the capability for municipalities to review how much footage a telecommunication provider has reported in their right-of-way application, etc.
Result: Challenge remains for FY09.
3. Payment Calculation – The METRO Authority continues to need MDOT to make payment calculation to municipalities based on their Act 51 fund distribution system. At some point, the Authority will need the capability to do these calculations in-house.
Result: Challenge remains for FY09.
4. Budget – METRO Authority continues to be in dire need of a budget/funds to perform the above and other prescribed functions of the METRO Act. To this end, the DLEG Executive Office has requested the legislature to amend the Act via, proposed SB 425.
Result: Challenge remains for FY09.
5. Municipality Opt-Ins – Continue support to amend the Act, via SB 108, to allow several currently ineligible municipalities to become eligible to receive METRO Act funding.
Result: Challenge goal met—PA 130 amended METRO Act and allowed 19 additional municipalities to receive funding—leaving only 20 of 1,778 ineligible.

NEW FY09 CHALLENGES FOR METRO AUTHORITY

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- Bundled Services Assessments—need to determine how to assess maintenance fees on providers bundling telephone, cable TV, and broadband services. Do we assess at cable rate, telephone rate, or both?
- HB6456 (Video Services Act)—will need to address certain issues related to METRO Authority references in this new legislation for statewide franchising of video services, particularly:
 - Section 6(11) calculations of METRO Act credits
 - Coordination with MPSC
 - Does Act preclude non-opted-in municipalities to enter into agreements with new video service providers; is Section 6(11) applicable to these municipalities?
- VOIP Companies—MPSC indicates that it has no regulatory authority over VOIP companies. However, Sections 8(11) and 8(12) of the MTRO Act could be interpreted to imply that VOIP companies may be covered, but would not necessarily result in the Authority collecting any more fees from the cable companies that provide VOIP services. In light of the new Video Services legislation, does the METRO Authority need to continue to monitor this matter?
- Provider Linear Foot Reductions—Municipalities have expressed considerable concerns about a verification process of the reductions of linear footage reported by providers. Due to the Authority's limited staff, the Authority, currently has the authority, but not the ability to audit the provider reports/information. Is this a matter that can be addressed by other means?

FOIA

1. Semi-Autonomous Agencies— There are currently 4 (MSHDA; MLCC; MPSC; and MCSC) and about 30 additional offices/bureaus in DLEG which FOIA actions need coordination as regards specific responsibilities to respond to requests and/or appeals.
Result: Challenge remains for FY09.
2. Policies/Procedures— There is need to consolidate in one booklet the various FOIA related provisions common and unique to each bureau/office; expect to be completed by February 15, 2008, or sooner.
Result: FOIA Unit met this goal February 28, 2008.

CUSTOMER SATISFACTION

Customer satisfaction, while currently very good, will need to be monitored as the impact of PA48 is fully implemented during the next year. FOIA customer satisfaction is relative to the information requested and ultimately received.

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Result: Challenge remains for FY09.

PROCESSES/SERVICES DEVELOPED BASED ON NEEDS OF CUSTOMERS

Processes/services are developed by regular communication with customer-based representatives; other telecom regulators; telecom/municipal associations, the Michigan Public Service Commission; periodic surveys of customer-related issues; legislation; etc.

Result: Challenge remains for FY09.

USE OF CUSTOMER DATA TO MODIFY ACTIVITIES; IDENTIFIED TRENDS

Customer satisfaction data is used to provide:

- Modification of regulatory practices where appropriate
- Development of new forms or procedures
- Changes in content of the METRO Authority website
- Development of monitoring tools
- Assessment of training needs for staff
- Changes in the way work is scheduled and staff assigned, where possible

Some ongoing trends are: (1) customers' *requested* use of electronic means for submitting and receiving information; (2) customers' appreciation and anticipation that telecom permits/process become increasingly more uniform among the municipalities; and (3) increased electronic communication from customers.

Result: Challenge remains for FY09.

METRO AUTHORITY/FOIA PRODUCTS/SERVICES

The major products/services include:

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- Annual collection of \$23-\$25 million from over 91 telecommunication providers to distribute to 1,758 eligible providers.
- Determinations to establish/clarify policy/procedures regarding the implementation of the METRO Act; and FOIA.
- Establish guidelines for METRO Authority/FOIA activities.
- Coordinate the FOIA related activities of 32 DLEG unit FOIA Coordinators (and appeals) regarding over 45,000 FOIAs and subpoenas received annually by the department.
- Annual report of METRO Authority activities to Governor and Legislature.
- Provide consultation services to 1,778 municipalities and 91 telecom providers as needed.
- Coordinate activities with other state agencies involved with FOIA and METRO Act activities (Attorney General, MPSC, Governor's office, legislators).
- Research/interpret relevant statutes/regulations.
- Administrative rule promulgation.

Result: Maintain for FY09.

PROCESSES USED TO MEASURE QUALITY, EFFECTIVENESS, IMPACT OF PRODUCTS AND SERVICES

Internal and external customer satisfaction and impact on program effectiveness is measured via periodic customer surveys; telephone and face-to-face communication/dialogue with customers; input from peer groups, staff, and related agencies (MPSC); FOIA requested/appeals timely and accurately processed; maintenance fees collected/distributed as required by METRO Act; and periodic analysis of data base information.

Result: Maintain for FY09.

SUCCESS MEASURES

The METRO Authority/FOIA unit measures success by how METRO Act/FOIA statutory requirements are met; how performance targets/deadlines are achieved. Data is periodically reviewed to initiate program revisions as needed.

Result: Maintain for FY09.